FAO 23/2007
BEFORE
HON'BLE MR JUSTICE BP KATAKEY

This appeal is directed against the ex parte order dated 23.8.2007 passed by the Civil Judge, (senior division) No. 2, Kamrup at Guwhati, in Misc. (J) Case No. 175/2007 arising out of Counter Claim filed in Title Suit No. 120/2007 directing the parties to maintain status quo over the suit land in the matter of its alienation or making any construction over it on the basis of the application filed by the present respondent No. 1 who is the principal defendant in the aforesaid suit.

I have heard Mr. SP Roy, learned counsel for the appellant as well as Mr. S Sarma, learned counsel appearing on behalf of the respondent No. 1. None appears for the respondent No. 2.

The appellant herein, as plaintiff instituted the Title Suit No. 120/2007 which is pending in the court of the learned Civil Judge, (senior division) No. 2, Kamrup at Guwahati praying for declaration of right, title and interest over the land described in the schedule to the plaint and also for declaration that the sale deed dated 25.4.2007 being the subsequent sale deed does not confer any right, title and interest on the defendant No. 1 as well as for confirmation of possession against the present respondent No. 1 as the principal defendant No. 1 and respondent No. 2 as proforma defendant No. 2 together with the application under Order 39 Rule 1 and 2 read with section 151 of the Code of Civil Procedure praying for injunction restraining the defendant No. 1, his servants, agents, employees workman, and associates from causing any kind of nuisance, obstruction, annoyance and threat in any manner, in respect of peaceful use and possession of the suit property. The said application was registered as Misc. (J) Case No. 90/2007. The learned trial court on 23.5.2007 passed an ex parte ad interim injunction directing the parties to maintain status quo as regards the possession of the suit land fixing 14.6.2007 for show cause by the defendants.

The defendants/respondents herein on receipt of the summons, entered appearance and filed their respective written statements. The present respondent No. 1 who is the defendant No. 1 in the said suit along with the written statement also filed a counter claim. The respondent No. 1/defendant No. 1 also filed an application under Order 39 Rule 1 and 2 read with Section 151 CPC on the same day on which the written statement, the counter claim, and also the objection to the prayer for injunction made by the plaintiff were filed.

In the counter claim arising out of Title Suit No. 120/2007, the learned Civil Judge vide order dated 23.8.2007 passed an ex parte order directing the parties to maintain status quo as discussed above even without service of copy of such injunction petition on the learned counsel appearing on behalf of the plaintiff in Title Suit No. 120/2007 though the Civil Court Rules and Orders provides for service of any application filed in a pending proceeding on the learned counsel appearing on behalf of the other side which requires any judicial consideration. Such a course of action taken by the learned Civil Judge cannot be termed as legal and valid. The effort of the learned court ought to have been to get a copy of application served on the learned counsel appearing on behalf of the plaintiff in Title Suit No. 120/2007, which was not done in the instant case and without serving copy of such application, the order has been passed by the learned Civil Judge on 23.8.2007. The natural consequence normally would have been to set aside the order dated 23.8.2007 passed in Misc. (J) Case No. 175/2007 but keeping in view the fact that the learned court vide order dated 23.5.2007 directed the parties to maintain status quo as regards the possession of the land in question and also the fact that the case has been initially fixed on 15.9.2007 vide order dated 23.8.2007 which has, however, now been fixed on 18.1.2008 as submitted by the learned counsel for the parties, for hearing of the injunction petition in Misc. (J) Case No. 175/2007, I do not consider it necessary to interfere with the order of status quo passed by the learned Civil Judge (senior Division) No. 2, Kamrup at Guwahati till 18.1.2008 i.e. the date fixed for hearing of the injunction petition filed by the defendant No. 1 i.e. in Misc. (J) Case No. 175/2007. The learned Civil Judge (senior Division) No. 2, Kamrup at Guwahati is di

rected to hear and dispose of the injunction petition in Misc. (J) Case No. 175/2007 as well as the injunction petition filed by the plaintiff in Misc. (J) Case No. 90/2007 on the next date fixed i.e. on 18.1.2008.

The appeal is accordingly disposed of.